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4. Arbitration and Award (§ 85 (3)*)—Partiality or Misconduct of Arbitrators—Evidence.—In a suit involving an award made under provisions of a building contract fixing the value of work, evidence held insufficient to show that the arbitrators were dishonest, prejudiced, or unfair.

5. Contracts (§ 232 (2)*)—Implied Contract—Ratification.—Where, owing to a defect in plans, and not from contractor's fault, walls collapsed, requiring additional work to be done, and the corporate owner accepted and utilized the work done, even without an express contract, the contractor is fairly entitled to recover the value of the work performed.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 983.]

6. Mechanics' Liens (§ 254 (2)*)—Foreclosure—Counterclaim—Defects.—In the foreclosure of a mechanic's lien by contractor, who failed to waterproof basement walls because of the caving in of the earth, and where there were leaks and other defects in the roof, although the building was accepted by the corporate owner, allowance should be made for such defects.

7. Courts (§ 475 (10)*)—Jurisdiction—Enforcement of Mechanic's Lien.—If a suit in a city corporation court against the corporate owner of a building in which receiver was appointed was instituted before a contractor's mechanic's lien foreclosure suit was instituted in the circuit court, the contractor should be required to intervene in the corporation court; but, if the mechanic's lien suit was first instituted, the receiver should appear and defend.

Appeal from Circuit Court of City of Hopewell.

Suit by C. E. Adams against the Tri-City Amusement Company, Incorporated, to enforce a mechanic's lien. From a decree for plaintiff reducing the amount of his claim, plaintiff appeals. Amended and remanded.

Don P. Halsey, of Lynchburg, and *A. B. Dickinson*, of Richmond, for appellant.

J. O. Heflin, of Colonial Beach, and *A. L. Jones*, for appellee.

COMPTON et al. v. RIXEY'S EX'RS et al.

March 13, 1919.

[98 S. E. 651.]

1. Wills (§ 794*)—Relinquishment of Provisions—Time.—Where a widow entered into enjoyment of property under a will and after

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

seven years relinquished its provisions, it was too late for her to claim the provision made for her by statute.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 871.]

2. Wills (§ 440*)—Construction—Intention.—The testator's intention is that spoken by the words of the will, and not the intention deduced from speculation as to what he would have done had he anticipated a change in the circumstances surrounding him at its execution.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 780.]

3. Wills (§ 802 (2)*)—Remainders—Acceleration.—Where testator designates remaindermen to take upon the death or remarriage of his wife as "my children then living and the descendants per stirpes of such as may be then dead without issue surviving," no one can tell, until the happening of the event which is to terminate wife's life estate, which of the children answer the description of being "then living," and the wife living and not remarrying cannot by renunciation of rights under a will accelerate the taking by the remaindermen.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 836.]

4. Wills (§ 802 (2)*)—Construction—Intention—Acceleration of Vested Remainder.—Where the remainder is vested, it does not follow that the time of enjoyment will be accelerated by the renunciation of the life holder, since the testator's intention, as shown by the will read as a whole, may not permit under the existing circumstances.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 836.]

5. Wills (§ 634 (8)*)—Remainders—Substitutionary Remainder—Acceleration.—A remainder to a person after a life estate to another, or if such person be dead then to his heirs, is not contingent but substitutionary, and the mention of his heirs is intended to prevent a lapse in event of the death of the remainderman in the lifetime of the life tenant, and, if the particular estate ceases in such tenant's lifetime, the remainder may be accelerated as a vested remainder.

6. Wills (§ 853*)—Contingent Remainders—Acceleration of Enjoyment.—Although there can be no acceleration of a contingent remainder, yet, where the contingency is the death of a life tenant, whatever terminates the life estate or prevents it from taking effect is equivalent to the death of a life tenant.

7. Wills (§ 853*)—Construction—Acceleration of Remainder.—When it appears that the life tenant and remainderman are sufficiently designated and testator intended that they together should take the whole estate, acceleration will be accorded the remainder-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

man when the life estate is eliminated in any manner, for such must have been testator's intention.

8. **Wills (§ 554*)—Construction—Acceleration of Remainder.**—A gift to testator's "descendants per stirpes of such as may be then dead without issue surviving" is not substitutionary, but creates contingent remainders in the persons mentioned, and they take as purchasers, and only those living at "the death or remarriage" of the wife, life tenant, answer the description of donees under the provisions of the clause.

Appeal from Circuit Court, Fairfax County.

Suit by Mary B. Compton and others against John S. Barbour and another, as executors of the estate of John F. Rixey, deceased, and others. From a decree dismissing the bill, the complainants appeal. Decree affirmed.

Jos. F. Moore, of Berryville, for appellants.

R. E. Thornton and *John S. Barbour*, both of Fairfax, and *H. Thornton Davies*, of Manassas, for appellees.

LEACHMAN, County Treasurer *v.* BOARD OF SUP'RS OF
PRINCE WILLIAM COUNTY.

March 13, 1919.

[98 S. E. 656.]

1. **Appeal and Error (§ 56*)—Judgments Appealable—Amount in Controversy.**—Where court, on exception to disallowance of claims to an amount upward of \$900, paid by county treasurer, affirmed the disallowance and gave judgment for costs against him, the judgment was appealable, under Code, § 3454, as in effect a final judgment for money to amount of claims disallowed.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 477.]

2. **Trial (§ 370 (3)*)—Submission of Issues to Jury—Bills Allowed by Treasurer.**—A cause in the circuit court on exceptions to the commissioner's report refusing to allow certain items paid by the county treasurer raises an issue presenting a question of law, which should have been decided by the court, and not submitted to the jury.

3. **Trial (§ 370 (2)*)—Ex Parte Matters—Treasurer's Settlements—Right to Jury.**—Upon a county treasurer's exceptions to the report of the commissioner of accounts refusing to allow items paid, authority is not conferred upon the court by Acts 1914, c. 330, or by

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.